HON'BLE SRI JUSTICE A. GOPAL REDDY

WRIT PETITION NO.28251 OF 1995

DATE:07.03.2007

Between:

The Management of Andhra Bhoomi,
36, Sarojini Devi Road, Secunderabad.
Rep. By its Managing Partner
Sri T.Venkatram Reddy.

..... PETITIONER

AND

K. Mohan Rao & others

.....RESPONDENTS

HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P. No.28251 OF 1995

ORDER:

The management of Andhra Bhoomi Telugu Daily

Newspaper invoked the certiorary jurisdiction of this Court to call for the records relating to passing an order dated 22.6.1995 in I.D.No.520 of 1993 on the file of second respondent and to quash the same as arbitrary and illegal.

The first respondent who was working as a Junior Compositor since 1977 in the petitioner-Organization, was removed from service on 14.4.1990 basing on the report of enquiry officer, dated 30.3.1990 for a proved misconduct of his obtaining a loan from Canara Bank for starting his own business in the name and style of Bhanu Enterprises, without obtaining prior permission from the management of the petitioner. Therefore, the petitioner invoked the jurisdiction of the Labour Court-second respondent herein by raising a dispute under Section 2-A(2) of the Industrial Disputes Act seeking reinstatement into service with backwages and other attendant benefits. The management of the petitioner contested the same stating that they received Ex.M.1 letter dated 23.4.1990 from Senior Manager, Mettuguda Branch of Canara Bank informing that the first respondent took a loan from the bank and that he has to pay Rs.7,614.60 ps. with interest thereon from 25.2.1988 and requested to recover the said amount from the benefits payable to the first respondent. Basing on the said letter, the management of the petitioner issued Ex.M.2 charge memo against the first respondent stating that while he was in service, he obtained a loan from the bank and started a business by name 'Bhanu Enterprises' without obtaining prior permission from the management of the petitioner and the same is contrary to the service conduct. Not satisfied with the explanation offered by the first respondent, an enquiry was ordered and the enquiry officer submitted a report on 30.3.1990 and basing on the same, the services of first respondent were terminated by the impugned order.

The Labour Court observed that Ex.W.10 the appointment order issued by the management of the petitioner does not contain any clause that the first respondent should not take loan from anybody or he should not start any business. Further, Clause 9 contained in

Ex.W.10 prescribes only that the first respondent should abide by the rules and regulations of the organization which are in force and which may be issued by the management from time to time. As the management of the petitioner has not adopted any certified model standing orders and since starting of a trade without the permission of the employer is not a misconduct either under Rule 14 of the Industrial Employment (Standing Orders) Central Rules, 1946 or under Rule 20 of A.P. Industrial Employment (Standing Orders) Rules, 1953, the Labour Court came to the conclusion that the first respondent has not committed any misconduct. Accordingly, the Labour Court ordered for reinstatement of the first respondent into service with continuity of service, but it denied the backwages from the date of termination till the date of raising the industrial dispute and awarded the backwages from the date of suspension till the date of removal from service and from the date of filing of the petition till the date of reinstatement or from one month after the date of publication of the award whichever is earlier. Further, the Labour Court directed that the period between 14.4.1990 and 12.4.1993 shall be taken into consideration for the purpose of giving notional increments and for fixing the pay after the reinstatement.

Heard the learned standing counsel for the petitioner and learned counsel for the first respondent.

It is not in dispute that the management of the petitioner failed to produce any rules and regulations which defines the misconduct including obtaining loan from bank by a workman for starting of own business without prior permission and without intimation to the management of the petitioner. Further, as rightly observed by the Labour Court either the Rule 14 of the Industrial Employment (Standing Orders) Central Rules, 1946 or the Rule 20 of A.P. Industrial Employment (Standing Orders) Rules, 1953 do not enumerate the act of obtaining loan from a bank by a workman for starting his own business without obtaining prior permission from the employer as a

misconduct. Therefore, the Labour Court was right in setting aside the removal order of the first respondent dated 14.4.1990. But, the Labour Court is not justified in awarding the backwages from the date of raising the industrial dispute till the date of passing of award or its publication. Admittedly, the dispute was raised on 12.4.1993 and the award was passed on 22.6.1995. The maxim *actus curiae neminem gravabit* applies in this case in all fours i.e. the act of the Court shall prejudice no one. Merely because the first respondent raised the dispute on 12.4.1993, which was disposed by the Labour Court on 22.6.1995, the management of the petitioner cannot be penalized with the backwages for the said period when the same was pending adjudication before the Court. At the most, the first respondent is entitled for wages from the date of publication of the award, but not anterior to the same for the reason that the management of the petitioner has not extracted any work from the first respondent. Further, the first respondent has not denied the fact of his availing the loan from the bank and starting of a business on his own. If that be the case, it can be presumed that he is concentrating for the development of the business having regard to the fact that though he was terminated from service as long back as on 14.4.1990 he has raised the dispute on 12.4.1993 nearly three years after termination. In that view of the matter, awarding of the backwages from the date of raising the dispute till the date of reinstatement or from one month after the date of publication of the award whichever is earlier, cannot be justified and to that extent the award is set aside.

The writ petition is allowed in part as indicated above. No costs.

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A. GOPAL REDDY, J

07th MARCH, 2007.
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